UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE ANDRÉ BIROTTE JR., U.S. DISTRICT JUDGE

GROUNDSWELL TECHNOLOGIES, INC., A DELAWARE CORPORATION,

PLAINTIFF,

vs.

SYNAPSENSE CORPORATION, A DELAWARE CORPORATION, AND PANDUIT CORPORATION, A DELAWARE CORPORATION,

DEFENDANTS.

No. CV 15-06024-AB (JPRx)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, FEBRUARY 29, 2016

10:15 A.M.

LOS ANGELES, CALIFORNIA

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LOS ANGELES, CALIFORNIA; MONDAY, FEBRUARY 29, 2016

10:15 A.M.

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THE CLERK: Calling Item Number 1, CV 15-6024-AB, Groundswell Technologies, Inc. versus Synapsense Corporation, et al. Counsel, please state your appearances.

MR. NI: Thank you. For the plaintiff, Hao Ni, and with me is my co-counsel, Kris LeFan.

THE COURT: I couldn't hear you.

MR. NI: No problem, Your Honor. My name is Hao Ni, and with me is my co-counsel, Kris LeFan.

THE COURT: Good morning.

MR. HAWKINS: Good morning, Your Honor, I am Brent Hawkins on behalf of the defendants, Synapsense Corporation.

THE COURT: We are here on a Motion to Dismiss on a very interesting case Defendants' Motion to Dismiss for lack of a patentable subject matter.

I did not issue a tentative in this case for a number of reasons. I wanted to hear from the parties, hear the argument from the parties on this.

I guess I would ask plaintiff's counsel, Mr. Ni, I believe you had attempted to file a sur-reply, but it was stricken. I'm curious was what the reason for filing the sur-reply. That's a little unusual. So I was just curious.

MR. NI: That's correct, Your Honor. We just wanted to address some additional points that were in defendants' reply brief, and we thought, you know, we didn't get the opportunity to do so. It was raised in -- Your Honor, we thought it was raised in the reply brief; so we wanted to have a chance to address that in the sur-reply.

THE COURT: Okay. Well, then, I am assuming you you will have an opportunity to do that here today.

MR. NI: Yes, Your Honor.

THE COURT: All right. So I understand from our courtroom deputy that I believe the plaintiff has a PowerPoint they want to present?

MR. NI: Yes, Your Honor. We have -- well, rather than doing it on the screen, we have physical copies that we can provide you one and one for the clerk and then one for the defendant as well.

THE COURT: And have you provided a copy of that to defense counsel this morning at least?

MR. NI: No, we have not.

THE COURT: So they have not seen it?

MR. NI: They have not seen it.

THE COURT: Mr. Hawkins, I am assuming you have something to say about this PowerPoint.

MR. HAWKINS: I object, but I will let them go ahead and use it. I don't know that it will affect the argument.

THE COURT: Okay. Why don't you present it to the courtroom deputy and make sure defense counsel -- but going forward, Mr. Ni, if you have got an exhibit that you intend to use, it probably makes sense to let defense counsel have it in advance.

MR. HAWKINS: Actually, Your Honor, it's fairly extensive. Is there a way -- and I don't want to disrupt the Court's schedule -- but if we could be called second to give me an opportunity just to look through it? It doesn't look particularly problematic, but I would like to just take a look.

THE COURT: You know, in fairness, I did note it is pretty voluminous. The PowerPoint is about 25 pages.

Do we have the parties here on our second matter? Looks that way. So why don't we do that. That's a good suggestion, have you -- have an opportunity to do that. We'll deal with our second matter right now, and then we'll call this one back momentarily.

MR. NI: Thank you, Your Honor.

(Recess taken 10:19 to 10:40 A.M.)

THE CLERK: Calling -- recalling calendar Item Number 1, CV 15-06024-AB, Groundswell Technologies, Inc., versus Synapsense Corporation, et al.

THE COURT: All right. Thank you. So you have had a few minutes at least. I don't expect or -- that you would have time to absorb every single page of this, but, Mr. Hawkins, do you feel that you are in a better position to proceed going forward, and do you wish to make any objections with respect to the PowerPoint?

MR. HAWKINS: I do wish to make an objection, Your Honor. But as to the content, we hadn't had a chance to fully vet it, but I do feel that I am in a position to proceed.

THE COURT: Your objection is noted for the record. I can consider this for purposes of the oral argument, and I will do so for that purpose only. It's not an exhibit to any of the motions, but I will allow Mr. Ni to proceed.

And I appreciate the fact that you prepared this PowerPoint because the -- one of the first questions I was going to ask is just provide for me in layman's terms the description of the technology at issue.

Obviously, it's referred to in the papers. There is an attachment of the actual patent, but I'd appreciate, sort of, a layman's sense of what is this technology because ultimately the issue is, I think, is it any different than anything that's already out there? And so but please proceed.

MR. NI: Thank you, Your Honor. Just for the record, the PowerPoint was not meant as evidence. It's more a demonstrative for explaining the discussion today.

THE COURT: Fair point.

MR. NI: Your Honor, I guess, since this is actually defendants' Motion to Dismiss, I believe defendant should actually begin their discussion on why they believe this patent is invalid as the patent is given a presumption of validity.

THE COURT: We can do that, but while you're here I would like to hear you from first only because I just want to understand what this technology -- I would think that you would be in the best position to explain that.

MR. NI: Sure. Not a problem, Your Honor. So I will begin with just a little bit of background about the patent.

So the patent, the inventors of the patent, Dr. Mark Kram, is a -- was a professor at UC Santa Barbara here, and his co-inventors worked with him at this company referred to as Groundswell Technologies. And Groundswell made software which operated with these environmental sensors to show sort of a visualization of what the sensors are detecting because the sensors collect massive amounts of data.

So for someone like you and me to figure out what the sensors are actually collecting, you need a good way to visualize it over a 3D topography to see, well, here are sensitive areas. These areas we need to be cautioned of because there is certain rises in temperature at this point or there is overflow of water at this point.

So those sensors and all the data they collect are then sent to these computer systems, and there is a very specific way the patent describes on how to process that data and then how to return a visualization of all of that data you are looking at.

THE COURT: How is that different than other geographical information systems and their technology?

MR. NI: That's set forth in the claims here. So there is a lot of discussion in the briefing where the defendants group all the claims together. They say the concept is the same in all claims. When I am addressing these, I will address them as the system claims and the method claims.

So Claims 1 through 8 are all system claims, and then Claims 9 through the remainder, 9 through 20, are all method claims. There is different standard in viewing some of these claims.

So with respect to the system claims, each single claim has a number of means-plus-function elements. Now, those claims by themselves need to be construed by the Court.

If you look at one of the cases that --

THE COURT: Mr. Ni, do me a favor. Slow down a little bit. I know there is a lot of information here, and I want to make sure we get this all down.

MR. NI: My apologies. I do tend to talk a bit fast, and this patent case is probably not as interesting as the first case we had in front of us.

THE COURT: I disagree. I found this very fascinating, over the last week, and I was excited to hear from experienced litigators as to what this is all about. So I welcome the discussion.

MR. NI: Okay. Well, in this Court, in the Nomadix versus Hospitality Core Services, case CV 14-08256, in that case the defendants brought a Motion to Dismiss patent on the same grounds.

The Court denied it because they found it was premature in view of the fact that none of the terms in the patent had been construed.

So even if there was a supposed valid reason for this motion here, in this case, the systems claims all have these means-plus-function limitations which should be construed by this Court first. Because once we get a claim construction on the means-plus-function limitations, then the Court will realize that all of the elements in the system claims are not just generic computers and sensors as the defendants are claiming.

The patent specifically provides what the structures are for the means-plus-function claims, and these are not generic structures. They're specific hardware and software structures. The patent goes into a lot of detail on some of this stuff --

THE COURT: Are you saying that the these, I guess -- well, I guess the question I have is that the means and function -- means plus function, are you saying that sets it apart from other GIS technology?

MR. NI: Well, the means plus function, when you construe it, you construe a means term, as you know, that by the corresponding structure and the function of the means-plus-function term. So you have to look at the patent to see what the corresponding structure is, and then the patent discloses a number of specific examples on the -- on these, basically, explicit hardware and software structures and algorithms that perform these functions.

What that does is it's not, basically, an abstract concept of doing something. The patent is providing specific embodiment and specific structures on how these means -- the system claims should be described.

THE COURT: All right. Please continue.

MR. NI: And one of the things that defendants say about all of these claims is that it's directed to an abstract concept. So in the slides and in the briefing, we mention that they named a number of different abstract concepts. They've -- if you go to, I think, Slide -- I want to say -- it is Slide 16 and 17.

THE COURT: Okay. I see it.

MR. NI: Right. So in their original motion, the defendants said that the invention in this patent is directed to the abstract concept of monitoring data, is directed to the concept of detecting data, directed to the concept of reporting and displaying data. It's directed to the abstract concept of interpolating the data, and it's directed to the abstract concept of gathering and organizing data from multiple locations. It's directed to the abstract concept of plotting data on a map and directed to the abstract concept of tracking trends based on compiled data.

While it's true that the mention actually is directed to a lot of different concepts, it's -- provides a very specific implementation of how to get there. It's not just saying, "Hey, this claim is about monitoring data." It's not preempting entire field of monitoring data. It's saying these are very specific ways of monitoring data.

There are certain functions that have to be performed, certain ways the data has to be processed, and certain outcome visualizing the data.

If you were to --

THE COURT: I'm sorry. As it relates to that, I'm just trying to figure out -- is it your contention that this technology monitors data in a different way than others would monitor data?

MR. NI: This invention is not directed to just monitoring data. It's directed to, basically, monitoring environmental parameters using these sensors. These sensors have a telemetry system which then sends it to a computer having specific software modules set to process this data.

Now, those software modules require -- they're very specific requirements. They have to take that data, put it into a cardinal matrix format, and then that format is then used to create a cartographic layout, which is sort of a visualization of that data using a few number of steps it takes.

It has to do a geostatistical analysis. In the example in the patent, when you actually collect the data and put in the cardinal matrix, you have all these different points. You have the XYZ coordinates. You basically also have a column for the time and all of --

THE COURT: Let me stop you there for a second. I want to give the reporter a chance to catch up.

MR. NI: Sorry.

THE COURT: But I guess I go back to the question. This technology is about monitoring environmental parameters, if I understood you correctly. Are you suggesting, or is it your contention that this technology monitors environmental parameters in a different way than other technology?

MR. NI: That's correct, Your Honor, it does.

THE COURT: That's because of all the -- I'm just looking through -- the differences in this cardinal matrix format and things of that nature that make this different?

MR. NI: Yes. There are a number of limitations in the claims that make it a very specific limitation of monitoring. It's not just monitoring data. It's monitoring a data using these exact components in the system or monitoring data using these exact method steps. So it's not just simply monitoring data.

THE COURT: I understand that, but I am just trying to look at it from the 30,000-foot level. What does this technology do?

MR. NI: Okay. That's fair, Your Honor. The only reason I wanted to be more specific on that was that's sort of how someone gets the -- this argument -- abstract idea. If you look at any technology from a 30,000-foot view, you can break it all down to abstract idea.

If I invented, for example, like, a jet engine, I could break that down to an abstract idea. I would say it's an idea of propelling stuff using wind power, propelling stuff using -- creating a force from that, and then you can break it all down. If you really did that and you can break every single thing down to abstract ideas, then nothing would be patentable.

THE COURT: Fair enough.

MR. NI: That's sort of the distinction there.

And the best way to really look at Claim 1 is -- if we could go to Slide 7. And it's just -- all it is is, sort of, the physical components required in the system claims.

THE COURT: All right. I am at Slide 7.

MR. NI: Thank you, Your Honor. So Slide 7 -- the first claim element is a plurality of sensor packages. This is a figure -- I believe it's Figure 1 from the patent. It has these field sensors.

And then the next page refers to a means for transmitting data from the sensor packages and means for receiving the transmitted data.

In the figure here, you have this telemetry system, and that's also what's described in the patent as well. So data is then transmitted from the field sensors to the receiver of the telemetry system.

The next slide, Slide 9, is -- refers to the GIS integrated command structure, which is the computer-looking thing on the right corner.

And on the left side, it's the specific software modules that's used to -- used by that system to process all that data and to result in the visualization we're trying to get there at the end of the claim.

I could walk you through all the different elements here.

(Reading:) First element is a means for manipulating data connected to receiving means. Said manipulating means providing real time data formatted into a cardinal matrix form corresponding to a simultaneous, automated monitoring event for the sensor packages.

As you see here in Figure 3, an example of that is 34 -- and I think the printing may make it hard to read -- but it talks about how the data is then placed into this matrix format with these different corresponding coordinates, the XYZ, what's received from each sensor, and the time value of when that data is received.

THE COURT: Okay. I think I am getting sort of the gist of your point.

I don't think there is necessarily a need to go through each one, but your point is simply how this -- how the technology provides -- these environmental parameters are set forth in these individual, distinct algorithms and calculations that sets it apart from just the abstract idea concept that makes this unique to this patent.

MR. NI: Right. And that's correct, Your Honor, with respect to the -- to the system claims. So it's a little bit easier for me to explain the system claims segments to you because we can look at these physical components that are -- and software components that are described in the patent.

One of the things that defendants will argue is -- they have tried to bundle the system method claims together. I would submit to you that realistically the method claims, because they don't have the same physical structures attached to them, they have a better argument on their end whether or not that falls into an abstract concept. We're willing to concede that point.

But then, if you could -- even if they were considered an abstract concept here, then there is a test under the Supreme Court Allison Mayo cases. So there's the two-step test here.

Even if we assume that the method claims somehow falls into one of the abstract concepts or a collection of the abstract concepts, then we have to look at the inventive steps in the method claims and then whether or not what's being claimed preempts the field there.

The method steps are similar to the system claims except they're not claiming the software modules and the physical components that the systems claims claim. So they still have the specific steps of manipulating the data into the cardinal matrix format corresponding to a simultaneous automated monitoring event.

THE COURT: You have to step back a number of sentences because the last thing I show is "so they still have specific steps of manipulating the data into the cardinal matrix format corresponding to a simultaneous" -- and then it trails off.

MR. NI: Okay.

THE COURT: Slow down, please.

MR. NI: I apologize, Your Honor. I think it is the technical words here and the fact that I do tend to talk fast.

The last thing we were talking about was the method claims also contain these inventive steps. And the inventive steps include manipulating the data received from the sensors into a cardinal matrix format corresponding to a simultaneous automated monitoring event for the sensor packages.

Then the next step triggers the processing of the matrix formatted data. And then you have to conduct a real time geostatistical analysis on the matrix formatted data.

Using that new formatted data, then GIS, which is

Geographical Information System, compatible data is then created. And finally that data is then used to create a cartographic layout, which is basically a rendering of a mapping of where this information is being displayed and what you can see there. So you create that geo -- cartographic data from all this after performing all these steps.

THE COURT: Counsel, let me interrupt you again, if I could.

I guess I -- the novice in me says, okay. Isn't this, basically, data plotting? And if so, isn't this patent we're talking about here just a method of organizing natural activity in the same way that hedging was in the Bilski case? I think in that case was the method of organizing human activity. How is this different?

MR. NI: If you look at the method claim and if we are to concede that it is an abstract concept -- and we are looking for the inventive element here -- it's not simply data plotting. It's a very specific and novel way of taking a bunch of data -- and you are basically getting a data dump from all these sensors -- and then taking that data and organizing it, using these specific processes to get to a manageable visual format.

Now, you could take -- I could take sensor data and plot it; right? But then you run into the problem of dealing with huge amounts of data and not being able to see a 3D visualization of it or to -- like, basically, I guess the proper way to do it is, we refer to it as real time here. So you want to be able to process this data into a format at certain intervals.

Real time doesn't mean it has to be every second. It's every five minutes or every ten minutes just to give you the visualization of what's currently happening out there in the environment.

So this patent allows someone to take all that data and then manipulate it, organize it, using these specific steps.

And if you want to call it "plotting," you are creating a visualization of all of that data using the steps. But it's not merely plotting the data as you have to use these steps to do it. Whereas, I could plot the data just by taking the data and then putting it onto a map. That's not what I am doing here.

I would have to actually go through these steps of organizing the data to make it more manageable and more usable for someone creating these visualizations.

THE COURT: I am still kind of confused because you are saying you make it more manageable and you provide a visualization. The first question is does the data point plotting not provide visualization?

MR. NI: One of the key differences in this patent and is talked quite a bit about in the specification and also defined in some of the dependent claims a little bit more is this is also -- adds the component of interpolation as well.

You are taking the data. And during the processing of this data, you are creating additional values that you would not get normally from the data.

So rather than just seeing spots everywhere, like, where the data is collected, the claims, for example -- let me see. The best one to look at here would be -- one of them is Claim 17. It provides a specific example of using kriging to generate the inferred surface. Kriging is spelled k-r-i-g-i-n-g.

So this is inherent in Claim 9 as well, the way in which you are doing to the data. Kriging is a process where you -- there is certain data points you don't know. You can't have the sensors everywhere.

So it's a method of creating interpolation over the entire space. So say I have data points about five feet apart. I don't know exactly what the data is between points 1 and 2, but the kriging gives me the ability to use a formulization to interpolate what that value should be at those points.

THE COURT: You are saying that is something new and unique to this invention? Because I guess ultimately if this is not an abstract idea, what is the concrete tangible new invention that your patent contains?

MR. NI: I guess it's hard to put into just one example. It's a combination of all the elements of how you are processing it. Putting it into the cardinal matrix format, performing geostatistical analysis on that matrix information, and then creating a cartographic layout, which in this case includes interpolating the data to create these extra visualizations, and then you are overlaying these visualizations on top of each other or on top of a map or something that you look at so you have a view of all the different parameters at different time points.

THE COURT: All right. Okay. Another question I have -- again, I want to try to make sure we cover as much as possible.

How is your technology in this case more of a concrete invention than the computer program in Alice?

MR. NI: The bigger program in Alice was basically just moving numbers around to create that hedging process. It wasn't a specific formulization of taking one type of data and then converting it into a visualization of that data or creating additional data from that.

So one of the cases that defendants cited numerously in their brief and they tried to analogize this case to it is the Electronic -- Electric Power Group case. And so in that case, the claims were directed to a method of detecting events on an interconnected electrical power grid in real time over a wide area and then automatically analyzing the events.

So all of the claimed elements in the Electric Power Case dealt with receiving different types of data. So those claims didn't add anything new. Those claims said, "We receive a plurality data streams. We receive data from other power sources. We receive data from nongrid data sources, and then we display a visualization of those."

But they don't give step-by-step on how to actually take those data and then remanipulate it and create new information from it and put it into a way that is manageable and usable for someone versus the amount of data that you would normally have in your environmental systems.

THE COURT: Okay. Let me ask you next. Can you perform your patented claims on a generic computer or -- that's the question.

MR. NI: It would have to be a computer with the specific software set out in the patent. The patent describes; certain implementations of how to do -- how to perform the -- how to create the cardinal matrix, how to do the geostatistical analysis, how to do the Kriging process for interpolating the data. A generic machine wouldn't have that. You would actually have to have specific software modules programmed to do that.

THE COURT: Does the patent claims use generic computer functions then or not?

MR. NI: You can use a processor that's programmed with those functions to do it. So to say --

THE COURT: I'm sorry. I didn't -- you said you can use a processor with the programs?

MR. NI: If you have the software programs, you can use a computer, any kind of computer, to do it as long as those computer has the programming required to do it.

But it also has to operate with sensor packages with a telemetry system as well. You are adding additional limitations on that.

I know in the defense briefing they argue that is generic as well. But to that point, then, you could argue any sort of machine is generic.

In one of the cases that we had cited -- I believe it was the Timeplay versus Audience Entertainment case in front of this Court as well. That's CV-1505202. The invention there was a multiplayer video game system where you have a controller and you have a second display on the controller, and the second display on the controller also downloads a game component from the video game server for playing.

Now, you could break that down to saying, well, it's a generic controller, and it's generic display on that. But like I said, just like with the abstract concepts, you can break down any sort of components into generic components at some point.

THE COURT: Okay. I will allow you to continue, but those are the questions that I had right now.

MR. NI: Thank you, Your Honor.

And I think that's really most of what I have to say on the method claims other than the fact that it doesn't preempt any of the abstract concepts alleged by the defendants or a combination of them.

It doesn't preempt an entire field of monitoring, electrical environmental parameters. It doesn't preempt entire field of processing that data.

It provides one very specific way of doing something and getting a result that solves a problem that we had with large amounts of data normally collected from environmental systems and managing it in a real time or by interval-type basis.

THE COURT: Thank you, Counsel.

MR. NI: Thank you, Your Honor.

THE COURT: Mr. Hawkins, you heard a lot here. Mr. Ni has done a very good job of sort of laying out, look. This is not just data plotting. It's a lot of internal processes to manipulate and create algorithms to provide visualization, et cetera. What's your response?

MR. HAWKINS: I think Mr. Ni has articulated, but he still has only articulated generic multifunctional computers that can manipulate the data and have been used to manipulate the data over time.

There is nothing new about the idea of taking coordinate data, putting it in a matrix, and then charting it. People did it by hand prior to software being invented.

THE COURT: But I think Mr. Ni had said, for example, plot -- if you are doing this data plotting, if I understood him correctly, you have points or sensors at Point 1, Point 2, Point 3. And it's interpreting the data in between Point 1 and point 2 that I think sets -- at least I think he is saying sets his technology apart.

MR. HAWKINS: Your Honor, I think the idea of statistical analysis to interpolate that is also not new or inventive and shouldn't be protected in patent eligible subject matter. People -- the EPA has required that this data be collected for years by people running sites and other -- in other locations where there might be geostatistical implications.

They have collected the data through sensors. That's nothing new. They they have taken that data and interpolated it by using statistical analysis, and they plotted it to maps.

THE COURT: But they indicate that they utilize special systems to provide this visualization. Are you saying that that's nothing new?

MR. HAWKINS: It's important first to look at the claims when doing the analysis and not to the specification, and I submit that neither provide anything new.

The claims themselves are not so limited. We could start with the method claims. They're not so limited themselves to any particular version of the software or any specialized software.

And even if you look for -- look to the apparatus or system claims, the means for functionality, and you look to the actual structure disclosed, you will see that there is nothing new about those kind of systems.

I think plaintiff will concede that that kind of software functionality is available. But putting it together in a package for real time analysis is really what their claims are directed to, and that's simply not enough to make a patent eligible subject matter.

THE COURT: What basic tools of invention is the plaintiff's patent monopolizing, in your view?

MR. HAWKINS: Gathering -- we can start with the narrower -- gathering geostatistical data, analyzing it, and plotting it. And as we -- we tried -- I know the plaintiff made much ado about use of different words that we think are kind of synonymous, but it is.

It is monitoring and/or gathering the data, analyzing the data, using statistical analysis, and then displaying it on a -- over a map. In this case, the map is generated via computer.

THE COURT: What basic tools are you unable to use without infringing on the patent?

MR. HAWKINS: Well, we would say a lot, but, I mean, the idea of collecting information in a software that processes geostatistical data by plotting it into coordinates and then generating a resultant map we think would be preempted.

And broadly, Your Honor, and as applied here, we're actually not -- this case is not from our standpoint about even geostatistical data.

Our client makes -- has data rooms with computer shelves, computer stacks, and monitors heat -- heat in the data room. So it's broadly, as at least as plaintiff is applying it here in this case, it preempts even -- an even broader field, or at least they contended it does by asserting allegations of infringement against our client's product and systems.

THE COURT: These are questions that I have come up with. I just want to make sure I cover all of them before we take it under submission.

Are there any aspects of your technology that have no possibility of infringing on the plaintiff's technology?

MR. HAWKINS: Well, Your Honor, I think if you look at the specific means-plus-function analysis -- so if you input -- the analysis goes this way: It has to be the exact function and you look at the structure that's disclosed, the specific structure that's disclosed, or its equivalent, and if you look at the way we plot in a matrix, we don't do that. We don't do it the same way.

Doesn't mean what they're saying isn't broad enough to encompass the generic taking of information and plotting it, but it certainly limits the field to a specific one if indeed you interpret the means for a plus function as we would have you interpret it. So it depends on ultimately that.

But broadly speaking, taking information and plotting it into a specific -- plotting it and taking that and extrapolating it to statistical analysis is nothing new.

THE COURT: From your perspective, should the Court give any deference to the fact that the Patent Trademark Office issued a patent to the plaintiff for the technology?

MR. HAWKINS: I think the Court needs to give the deference of it's presumed valid. It certainly doesn't mean that patents can't be invalidated.

And I don't like to point to other cases, but there are -- there have been a particular slew of patents in this particular time frame, for whatever reason, that have deemed to be -- and I think it's partially at evolution of the law -- deemed to be unpatentable or nonpatentable, patent eligible subject matter as a result of an evolution of the law.

So, yes, I think there should be deference given to the patent office, under the law it should be presumed to be valid or not invalid, but it doesn't mean, under appropriate circumstances as we have here, the claim shouldn't be invalidated.

THE COURT: Is it your contention that these two systems are not different at all, they're one and the same from your perspective? The systems we're talking about here, are they innately different in your mind?

MR. HAWKINS: The broad -- the abstract system and what's here?

THE COURT: Yes.

MR. HAWKINS: No, I do not think so.

THE COURT: All right. Let me see.

I think those are all the questions that I had for you, Counsel.

Mr. Ni, you appear eager to get back to the lectern; so I will allow you an opportunity to be heard.

MR. NI: Thank you, Your Honor. I just wanted to make a few quick points.

Defendants concede that, on the system claims, they do have to be construed according to the corresponding structure and their exact function.

So when this Court looks at the different sets of claims, the system claim and the method claims, you should look at that with a distinction there, that those claims do have a specific structure that's being described in the patent.

Now, defendants say that all the claims are the same and they all preempt the field. But they also make the argument that their own system does not. So we can't be preempting the field and then they have a product that's in the same field that, therefore, doesn't infringe.

That makes very little sense to me in that sense because you have to say, well, this field is so narrow that you are preempting that we don't infringe.

But that's what patent law is. You get a monopoly on a specific invention, and that invention may be a very, very narrow field. That doesn't go anything against what these patents should be allowed for.

They also talk about their products as, you know, heat maps on -- in server farms. There is really no distinction in this case here in the claims.

The claims talk about gathering environmental data. Collecting heat sensors in a server farm is also collecting environmental data. That's really not a point for this discussion. I just kind of felt like making that point there.

And, you know, I think defendants' other point on the patents are presumed valid is correct for pretty much this patent and other patents. And in this case -- I know this is not entirely relevant and we mentioned it briefly in our briefing -- is that defendants have their own patents on monitoring and reporting environmental data as well. So it obviously benefits them if our patent is found valid as well.

THE COURT: All right. I appreciate the argument on both sides in this. I'm going to take a little time to sort of go through the papers. I will give you back the PowerPoint just to -- to make sure that it was used for informational purposes -- and it was helpful; so I do appreciate it.

Is there anything else that needs to be addressed before the Court takes the matter under submission, from either side?

MR. HAWKINS: No, Your Honor. But may I make one last response? Can't help myself.

THE COURT: I will allow it. We still have some time.

MR. HAWKINS: It's very short. And the idea -- I mean, plaintiffs has laid out what its field is, and it's geostatistical data and that our system falls outside of that -- it necessarily allows us for some room for not an infringement position.

And the fact that these are means-plus-function claims -- the courts have already found -- courts have found that whether they're means plus function -- in fact, the Intellectual Ventures versus Manufacturers and Traders Trust Company says that, just because you use means-plus-function language in your claim doesn't pull you into patent eligible subject matter or require that the Court needs to construe the claims.

With that being said, we pointed to corresponding structure, and it's still generic, general purpose computers, and that's all I have.

THE COURT: Thank you, Counsel. I appreciate the argument. Clearly, both sides are well prepared. I want to take some time to think this through. I'm hoping to get an order out before the end of the week, but it may not happen but -- so until then, the matter is under submission. All right. Thank you all.

MR. HAWKINS: Thank you, Your Honor.

MR. LeFAN: Thank you.

MR. NI: Thank you, Your Honor.

(Proceedings concluded at 11:18 a.m.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: May 27, 2016.

/S/ CHIA MEI JUI

Chia Mei Jui, CSR No. 3287